Supreme Court, U.S.
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No. 01-270

In the Supreme Court of the United States

YELLOW TRANSPORTATION, INC.,

Petitioner,

v.

MICHIGAN, ET AL.,

Respondents.

On Writ of Certiorari to the Michigan Supreme Court

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Under 49 U.S.C. § 11506(c)(1), the Interstate Commerce Commission was required to prescribe standards governing the manner in which States collected registration fees from for-hire motor carriers engaged in interstate commerce. In particular, 49 U.S.C. § 11506(c)(2)(B)(iv)(III) specified that the new standards "shall * * * result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." Implementing this provision, the ICC determined that States may not collect fees in excess of those collected or charged under pre-existing reciprocity agreements — *i.e.*, agreements under which a State reduced or waived the fee charged to carriers or vehicles based in another State if the other State provided a reciprocal reduction or waiver.

In this case, the State of Michigan nevertheless sought to charge fees that had been waived by its reciprocity policy as of November 15, 1991. The Michigan Supreme Court upheld the State's power to do that, holding that the only fee frozen by the federal statute was what the court termed the State's "generic fee," which the court defined as the maximum amount that could have been charged under state law in the absence of a reciprocity agreement.

Against this background, the Court has posed the following question:

Whether the Michigan Supreme Court erred in holding that, under 49 U.S.C. 11506(c)(2)(B)(iv)(III) (1994) and 49 U.S.C. 14504(c)(2)(B)(iv)(III) (Supp. V 1999), only a State's "generic" fee is relevant to determining the fee that was "collected or charged as of November 15, 1991."

RULE 24.1(b) STATEMENT

Pursuant to Rule 24.1(b) of the Rules of this Court, petitioner hereby provides the following names of parties to this proceeding whose names do not appear in the caption:

The Michigan Department of Treasury and its State Treasurer, the Michigan Department of Commerce and its Director, and the Michigan Public Service Commission and its Commissioners, John G. Strand, Ronald E. Russell, and John L. O'Donnell, are respondents.

RULE 29.6 STATEMENT

Petitioner Yellow Transportation, Inc. is a wholly owned subsidiary of Yellow Corporation, a publicly held company.

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BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the Michigan Supreme Court (JA 39-59) is reported at 627 N.W.2d 236 (2001). The opinion of the Michigan Court of Appeals (JA 23-38) is reported at 585 N.W.2d 762 (1998). The opinion of the Michigan Court of Claims (JA 19-22) is unreported.

JURISDICTION

The opinion and order of the Michigan Supreme Court were entered on May 15, 2001. A petition for certiorari was filed on August 13, 2001 and granted on January 22, 2002. This Court has jurisdiction under 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS INVOLVED

The pertinent statutory provisions are set forth in the Appendix to the Petition for Certiorari ("Pet. App.") at 99a-101a. The statute involved is 49 U.S.C. § 11506 (since recodified at 49 U.S.C. § 14504).

STATEMENT OF THE CASE

When Congress reformed the manner in which States may impose registration fees on vehicles engaged in interstate commerce by passing the Intermodal Surface Transportation Efficiency Act ("ISTEA") in 1991, it included a provision that prohibited States from raising the fees that were in place for trucking operations conducted as of November 15, 1991. In particular, Congress ordered the Interstate Commerce Commission ("ICC") to establish standards for the new system, specifying that the standards must "result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November

15, 1991." 49 U.S.C. § 11506(c)(2)(B)(iv)(III) (1994).[1] In carrying out this statutory mandate, the ICC concluded that States could not reinstitute fees that had been waived as of that date pursuant to so-called "reciprocity agreements" with other States because such fees had not actually been "collected or charged." The ICC's interpretation of the ISTEA was upheld by the D.C. Circuit. *National Ass'n of Regulatory Util. Comm'rs ("NARUC")* v. *ICC*, 41 F.3d 721, 724-725 (D.C. Cir. 1994).

In this case, the State of Michigan nevertheless imposed registration fees that had been waived pursuant to such reciprocity agreements as of November 15, 1991. Petitioner Yellow Transportation, Inc. ("Yellow") is one of the nation's largest interstate trucking companies. Applying its new policy to Yellow, Michigan imposed a registration fee of $10 for each of Yellow's trucks, even though it is undisputed that Yellow would not have been charged a fee to conduct operations in Michigan as of November 15, 1991 with respect to any of those trucks.

When Yellow filed suit to recover its registration fees, Michigan's authority to collect the fees was upheld by the Michigan Supreme Court, which expressly rejected the reasoning of the ICC, the D.C. Circuit, and two Michigan lower courts that had ruled in Yellow's favor. To reach this conclusion, the court below read the crucial statutory phrase ("collected or charged") to refer only to the "generic fee" imposed under state law — a term defined by that court as the

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[1] In 1995, Congress abolished the ICC and transferred the ICC's responsibilities under the ISTEA to the Secretary of Transportation. See ICC Termination Act of 1995, Pub. L. No. 104-88, § 101, 109 Stat. 804. At that time, 49 U.S.C. § 11506 was recodified at 49 U.S.C. § 14504. For convenience, we refer throughout to the original codification at 49 U.S.C. § 11506.

fee that *could have been* collected or charged if the State had chosen not to waive the fee under a reciprocity agreement. This peculiar decision cannot be squared with the plain statutory language and departs radically from the manifest intent of Congress. The decision below accordingly should be reversed.

A. Statutory Background

Beginning in 1965, Congress enacted legislation permitting States to require registration of for-hire motor carriers intending to operate in interstate commerce within their borders.[2] Congress directed the ICC to maintain standards under which these state registration requirements would not constitute an undue burden on interstate commerce. Under the resulting system, motor carriers paid fees separately to each of the States that assessed registration fees for interstate operations. This process required motor carriers to carry in each of their vehicle cabs so-called "bingo cards" bearing stamps from each of the relevant States to document the payment of the required fees. See *NARUC*, 41 F.3d at 724.

In 1991, Congress passed the ISTEA to streamline the process by which States collect registration fees from for-hire motor carrier vehicles operating in interstate commerce. The thrust of the ISTEA was to establish a single state registration system ("SSRS"). Under the SSRS, motor carriers pay all registration fees to a single base State — generally, the carrier's principal place of business — which then distributes the fees to other States. Motor carriers obtain receipts from their base State, which constitute evidence of registration in all other participating States. The ISTEA was originally codified at 49

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[2] See Pub. L. No. 89-170, § 2, 79 Stat. 648, added September 6, 1965, initially codified as 49 U.S.C. § 202(b)(2), recodified as 49 U.S.C. § 11506 by Pub. L. No. 95-473, 92 Stat. 1448, added October 17, 1978 (repealed 1991).

U.S.C. § 11506, but was subsequently recodified at 49 U.S.C. § 14504.

Of particular importance here, Congress intended that the changes implemented by the ISTEA not permit States to impose excessive registration fees that would burden interstate commerce. See H.R. Conf. Rep. No. 102-404, 102d Cong., 1st Sess. 437-438 (1991), reprinted in 1991 U.S.C.C.A.N. 1679, 1817-1818. Thus, while Congress delegated the task of creating and implementing the SSRS to the ICC, it included in the ISTEA a provision specifically prohibiting States from increasing their registration fees. The statute thus directs the ICC to adopt standards that, in relevant part,

> will minimize the costs of complying with the registration system, and * * * will result in a fee for each participating State *that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991.*

49 U.S.C. § 11506(c)(2)(B)(iv) (emphasis added). A separate provision of the legislation contains a congressional finding that "[t]he charging or collection of any fee under this section that is not in accordance with the fee system established under subparagraph (B)(iv) of this paragraph shall be deemed to be a burden on interstate commerce." 49 U.S.C. § 11506(c)(2)(C).[3]

B. ICC Implementation Of The ISTEA

In light of the ISTEA's express command that "the Commission shall prescribe amendments to the standards" governing state registration of for-hire interstate motor carriers (49 U.S.C. § 11506(c)(1)), the ICC initiated a rulemaking

[3] As of 1991, 39 States charged registration fees under the bingo card system. See *NARUC*, 41 F.3d at 724. Only those States were made eligible to participate in the SSRS. See 49 U.S.C. § 11506(c)(2)(D).

proceeding. Following an extensive notice and comment period — in which both the petitioner and the respondents in this litigation submitted comments — the ICC issued regulations, standards, and interpretations of the statute necessary for application of those standards. See 49 C.F.R. § 1023 (since redesignated as 49 C.F.R. § 367); *Single State Insurance Regulation*, 9 I.C.C.2d 610 (1993) (Pet. App. 43a-96a).

One of the agency's interpretations concerned the effect of certain pre-existing reciprocity agreements between States, under which one State agreed to reduce or waive its registration fees for motor carriers or their vehicles based in another State if that other State provided a reciprocal reduction or waiver. After reviewing the numerous comments on this issue, the ICC determined that States were *not* permitted to modify or rescind reciprocity agreements where doing so would enable them to collect registration fees higher than those they had collected on November 15, 1991. See *Single State Insurance Regulation*, 9 I.C.C.2d at 617-619 (Pet. App. 52a-54a). The ICC explained that this rule was necessary both to "carry out the letter of the law that fees be frozen as of November 15, 1991" and to implement "the intent of the law that the flow of revenue for the States be maintained while the burden of the registration system for carriers be reduced." *Id.* at 618 (Pet. App. 53a-54a). Under a contrary approach, the ICC concluded, "per vehicle fees for many carriers could increase greatly, and some States would realize windfalls." *Ibid.* (Pet. App. 54a).[4]

[4] Initially, the ICC had questioned its authority to require States to give continuing effect to fee levels established under reciprocity agreements, expressing the view that preserving these fee levels might prove administratively burdensome for some States. See *Single State Insurance Regulation*, No. MC-100 (Sub-No. 6), 1993 WL 17833, at *12 (ICC Jan. 13, 1993). After examining the statutory language and the comments filed on this issue, however, the ICC

Dissatisfied with the ICC's interpretation of the statute, several States and organizations of States challenged that interpretation in the D.C. Circuit. The court unanimously affirmed the ICC's interpretation, expressly noting that "the plain language of the statute precludes" reading the ISTEA in a manner that permits States to rescind or modify their reciprocity agreements and thereby collect more in registration fees than they did on November 15, 1991. *NARUC*, 41 F.3d at 729.

C. Michigan's Reciprocity Agreements

1. Prior to 1988, Michigan had entered into reciprocity agreements with several States and Canadian provinces regarding the registration fees that would be charged and collected for trucks operating in interstate commerce. JA 5. In 1988 and 1989, Michigan changed its law. Under the new system, Michigan permitted the imposition of a maximum fee of $10 per vehicle, but expressly authorized the Michigan Public Service Commission ("MPSC") to enter into reciprocal agreements and to waive the fee as to vehicles based in States or provinces that did not charge a fee to vehicles based in Michigan. See Mich. Comp. Laws § 478.7(4).

To implement the new legal regime, the MPSC issued a letter canceling its previous reciprocity agreements and contacted other States and provinces to determine whether those States and provinces charged registration fees to vehicles based in Michigan. JA 6. The MPSC made a policy decision to enter into informal reciprocity agreements with those States and provinces that did not charge or collect registration fees

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recognized that its initial view was inconsistent with the letter and intent of the ISTEA. See *Single State Insurance Regulation*, 9 I.C.C.2d at 618 (Pet. App. 53a-54a).

from vehicles based in Michigan. *Ibid.*[5] Michigan's system of reciprocity followed a "base plating" model. JA 6. Thus, when determining where a vehicle was based for purposes of applying its reciprocity agreements, Michigan looked to the jurisdiction where the vehicle was registered and had obtained its license plate, rather than to the principal place of business of the trucking company that operated the vehicle. JA 6-7. That system was in effect during 1990 and 1991. JA 6.

In the fall of 1990, Michigan sent interstate motor carriers (including Yellow) a form for registering their vehicles to operate in interstate commerce in Michigan during 1991. JA 13. At that time, pursuant to its reciprocity agreement with Illinois, Michigan did not require carriers to pay a fee for any of their vehicles that had been commercially plated in Illinois. JA 6. Because Michigan's vehicle registration year ran from February-to-February, Michigan accordingly did not charge or collect any fee from Yellow to entitle the company's Illinois-plated vehicles to travel in the State as of November 15, 1991. JA 6, 10, 13-14.

For its cab card stamps effective February 1, 1992, for the 1992 registration year, Michigan decided to modify its reciprocity agreements, changing the basis for determining reciprocity from the State in which the vehicle was base-plated to the State in which the trucking company maintained its

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[5] In its brief supporting the grant of certiorari, the United States questioned whether Michigan's fee waivers were reciprocated by the other State in all instances and therefore constituted "reciprocity agreements" in a literal sense. See Brief for the United States as Amicus Curiae at 14-15 (filed Jan. 2, 2002). The United States also observed, however (*ibid.*), that such a factual inquiry is irrelevant to the question presented. For convenience, we use the term "reciprocity agreement" throughout to refer to any state policy that precluded the collection or charge of fees from a given category of vehicle or carrier.

principal place of business. JA 6-7, 10, 42. For administrative convenience, Michigan sent its 1992 renewal applications to interstate motor carriers in September 1991, with payment due by January 1, 1992. JA 7, 25. Yellow returned the form and its payment in October 1991. JA 8.[6]

Michigan's modification of its reciprocity agreements had a dramatic impact on many interstate motor carriers, including Yellow. As of 1994, Yellow's entire commercial fleet was base-plated in Illinois, with which Michigan had a reciprocity agreement. JA 15-16. Yellow's principal place of business, however, was in Kansas, a State with which Michigan did not have an agreement. JA 8. Thus, had Michigan applied the system of reciprocity governing the fees collected or charged for operation as of November 15, 1991, Yellow would not have had to pay any fees for the 1994 registration year. Under Michigan's revised system of reciprocity, Yellow was obligated to pay $10 for each of its vehicles.

The SSRS provisions of the ISTEA came into effect in 1994. See 49 U.S.C. § 11506(c)(3). During 1993, Yellow contacted Michigan to confirm that the State did not intend to collect any fees to allow Yellow's vehicles to operate there in interstate commerce during 1994, pursuant to the system of reciprocity that was in place effective November 15, 1991. JA 15. Michigan, however, indicated that it intended to collect a $10 fee from Yellow for each of its vehicles. *Ibid.* The basis for its position was that it had sent the bill *for 1992 cab card stamps* to motor carriers before November 15, 1991. JA 7.

2. In August 1993, the American Trucking Associations filed a petition before the ICC asking the Commission to

[6] Because the SSRS provisions did not come into effect until the 1994 registration year, Yellow and other carriers were required to pay higher fees under Michigan's revised reciprocity system for the 1992 and 1993 registration years.

determine that several States were attempting to collect fees in violation of the ISTEA. The ICC instituted a declaratory order proceeding and solicited public comments. After evaluating the comments, the ICC issued interpretations of the statute. See *American Trucking Associations — Petition for Declaratory Order — Single State Insurance Regulation*, 9 I.C.C.2d 1184 (1993).

The ICC resolved several questions that had been placed before it. Some States had expressed the intention of modifying or canceling reciprocity agreements that were in place as of November 15, 1991. Those States and state organizations asked the ICC to reconsider its prior conclusion "that the letter of the law mandated that States observe their reciprocity agreements when determining the fees they charged" as of November 15, 1991. *American Trucking Associations*, 9 I.C.C.2d at 1194. After considering the arguments raised by the States, the ICC decided to "reaffirm [its] prior conclusion" because "[t]he language of the statute is clear." *Ibid.* The ICC therefore reiterated its position that "States may not use a mechanism * * * that requires or results in the wholesale disavowal of all or part of any type of reciprocity agreement on which a fee was charged or collected as of November 15, 1991." *Ibid.*

The ICC also issued an interpretation of the statute to resolve Michigan's argument that the fees it collected and charged for the 1992 registration year — for cab card stamps effective February 1, 1992 — should be deemed to have been collected or charged before November 15, 1991. Yellow had called this argument to the ICC's attention in response to the agency's request for comments concerning attempts by SSRS States to raise fees above the levels they had charged based on reciprocity agreements. See 58 Fed. Reg. 48,673 (Sept. 17, 1993). The ICC made clear that Michigan's interpretation was contrary to the terms of the ISTEA:

> Yellow has raised the issue of whether the statutory language concerning the "fee charged or collected as of November 15, 1991[,]" relates to fees charged for the 1991 registration year or for the 1992 registration year. We think it clear that the statutory language concerns only fees charged or collected for the 1991 registration year, and we so find.

American Trucking Associations, 9 I.C.C.2d at 1195. The ICC therefore granted the petition for a declaratory order in pertinent part. See *id.* at 1196.

D. Proceedings Below

After Michigan indicated that it would persist in charging a higher registration fee for the 1994 registration year than it had collected or charged as of November 15, 1991, Yellow paid the demanded fees under protest and filed suit in the Michigan Court of Claims for recovery of illegal fees. The parties cross-moved for summary judgment.

The Michigan Court of Claims recognized that the only issues before it were ones of statutory construction that had already been resolved by the federal agency entrusted with administering the statute. Thus, "[i]n interpreting the intent of [C]ongress," the court understood that "it should give great weight to the interpretation of the law applied to the statute by the agency charged with its enforcement." JA 21. With this principle in mind, the court held that "the decision by the ICC * * * in the *American Trucking* case is dispositive of the issues to be decided here." *Ibid.* The court therefore granted Yellow's motion for summary judgment as to the refund it sought, and denied Michigan's motion.

Michigan appealed the judgment to the Michigan Court of Appeals. That court found Michigan's arguments to be precluded by the ICC's reasonable contrary interpretations of

the statute. With respect to Michigan's argument that the fees frozen in place as of November 15, 1991 should be the fees imposed by the State for the 1992 registration year, the court held that — at a minimum — the ISTEA was ambiguous on the issue. See JA 27. Recognizing that the ICC had resolved the point adversely to Michigan in the *American Trucking* proceeding, the court "conclude[d] that the agency's interpretation of the statute was reasonable" and hence entitled to deference. JA 28.

The court also rejected any suggestion that States should not be required to consider reciprocity agreements in determining the amount of fees "charged or collected as of November 15, 1991." JA 29. The court noted both that the ICC had interpreted the ISTEA to preclude such a reading of the statute during the *SSRS* proceeding and that the D.C. Circuit in *NARUC* had unanimously ratified the ICC's understanding of the statute. Although the court recognized that the *NARUC* "decision is not binding on this Court," it found the decision "persuasive" and decided to "adopt its ruling with regard to this issue." *Ibid.* The court therefore affirmed the judgment of the Michigan Court of Claims. JA 34-35.

Michigan then appealed to the Michigan Supreme Court. In a divided opinion, that court reversed the judgment, concluding that, "in determining the 'fee * * * collected or charged' under 49 U.S.C. 11506(c)(2)(B)(iv)(III), Michigan's reciprocity agreements are irrelevant." JA 40. Although the majority purported to recognize that agency interpretations of statutes ordinarily are entitled to deference, it disregarded the ICC's interpretation of the ISTEA because it concluded that "the plain meaning of the terms of the ISTEA is clear." JA 46. Stating that "[t]he ISTEA itself refers only to the fee collected or charged, and contains no reference to reciprocity agreements," the majority felt that it "must look not at the fees paid by plaintiff in any given year, but at the generic fee

Michigan charged or collected from carriers as of November 15, 1991." JA 47.

The majority found that the "generic fee" was the $10 base fee provided by the first sentence of Michigan's registration fee statute and did not include any reductions in that fee effected pursuant to the second sentence of that statute through reciprocity agreements. The majority therefore construed the phrase "fee * * * collected or charged" in the ISTEA to mean a fee that *could have been collected or charged* had the State not entered into a reciprocity agreement rather than the fee that was actually collected or charged. JA 47-49. For this reason, the majority found that the plain meaning of the statute compelled its interpretation, and it therefore refused to consider the contrary view of the statute adopted by the ICC, the unanimous D.C. Circuit panel in *NARUC*, and both of the Michigan lower courts. See JA 47.

Two justices dissented from the majority's analysis. Justice Kelly recognized that — by construing the ISTEA to refer to fees that could have been but were not collected — "the majority's interpretation of the ISTEA depends on addition to the statute of words not present there." JA 50. Justice Kelly further opined that the language of the statute certainly allowed a reasonable interpretation contrary to the "strained reading" of the majority and that the court therefore was required to defer to the ICC's interpretation. See JA 52.

Justice Cavanagh wrote a separate dissent, also taking the view that the statutory language was ambiguous. JA 52-59. Justice Cavanagh found that many of the dictionary definitions of the word "charged" precluded the majority's interpretation, although he believed that certain other definitions were arguably consistent with the majority view. See JA 55-58. Finding both interpretations of the statute reasonable, Justice

Cavanagh concluded that the court was obligated to defer to the ICC's reasonable view. See JA 58.

On January 22, 2002, this Court granted Yellow's petition for a writ of certiorari.

INTRODUCTION AND SUMMARY OF ARGUMENT

The decision below took a serious wrong turn away from both the clear statutory text and controlling principles of agency deference. In effect, the Michigan Supreme Court read the phrase "collected or charged" to mean "*could* have been collected or charged had the State used reciprocity policies that were *not*, in fact, in force." The court then compounded that error by refusing to defer to an agency construction of the statutory language that was more than reasonable. For these reasons, the decision below should be reversed.

A. At the outset, the Michigan court misread the ISTEA's language. The term "collected or charged" is most naturally read to mean *actually* collected from the fee payer. In reaching a contrary conclusion, the court below understood the statute to have in mind the so-called "generic fee" that would have been imposed on motor carriers by state law in the absence of state reciprocity policies or other waivers. That approach, however, tortures the statutory language beyond recognition. The ISTEA does not refer to "generic fees" or inquire what fees could have been authorized by — *but were not actually charged under* — state law; it looks, instead, to the fees that *were* "collected or charged." Indeed, the approach taken by the court below makes no logical sense, since Michigan's reciprocity policy was as much an element of state law as was the Michigan statute setting fees that would have been imposed in the absence of a reciprocity waiver.

B. If the case is not resolved in Yellow's favor by the plain language of the ISTEA, the statutory text surely is (from

Yellow's perspective) no worse than ambiguous. With the exception of the majority below, almost every neutral reader of the ISTEA — including the ICC, the D.C. Circuit, two Michigan lower courts, two dissenters on the Michigan Supreme Court, and the U.S. Departments of Transportation and Justice — has concluded that the statute may fairly be read to preclude States from disavowing reciprocity policies that were in effect on November 15, 1991. The statutory language therefore cannot be thought unambiguously to compel the holding below. In these circumstances, deference to the well-reasoned, thoroughly considered conclusion of the ICC is mandatory.

C. It should be added that an alternative argument, not adopted by the Michigan Supreme Court but advanced by respondents in opposing certiorari — that the fees "collected or charged as of November 15, 1991" should be deemed to be the fees charged for the *1992* registration year, if the bills *for* 1992 were sent and paid in advance of November 15, 1991 — also lacks merit. The statutory language is most naturally read as looking to fees that were charged to entitle vehicles to traverse the taxing State's roads on November 15, 1991; it is undisputed that Illinois base-plated trucks traveling Michigan's roads as of that date paid the State nothing at all. And again, if the matter is not settled by the plain statutory language, deference is due the ICC's well-reasoned conclusion that the ISTEA is directed at fees collected or charged for the 1991 registration year. Michigan's alternative argument therefore should be rejected as well.

ARGUMENT

A. The Michigan Supreme Court Erred In Holding That The Fee *Actually* Collected Or Charged Is Irrelevant In Determining The Fee "Collected Or Charged As Of November 15, 1991" Under The ISTEA

1. It should go without saying that the task of statutory construction "begin[s] with the language of the statute. The first step 'is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case.'" *Barnhart* v. *Sigmon Coal Co.*, 122 S. Ct. 941, 950 (2002) (quoting *Robinson* v. *Shell Oil Co.*, 519 U.S. 337, 340 (1997)). If the meaning of the statutory language is clear, the inquiry should end and the statute should be enforced according to its terms. *United States* v. *Ron Pair Enters.*, 489 U.S. 235, 241 (1989). That principle is enough to dispose of this case, because the language of the ISTEA is entirely clear.

In the ISTEA, Congress expressly provided that the per-vehicle fee established by each State under the SSRS must "equal [] the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." 49 U.S.C. § 11506(c)(2)(B)(iv)(III). Read literally, the statute compels an inquiry into the *actual* fees that were being collected or charged for operations in mid-November of 1991 — which necessarily means that reciprocity agreements in place during that period must be taken into account.

Certainly, fees cannot be thought to have been "collected" if they were not actually paid because they were waived pursuant to a reciprocity agreement. Nor can such fees be said to have been "charged" within the ordinary meaning of the word. Imagine, for example, that the Acme Hardware Store has a list price for widgets of $10, but that Jane Purchaser buys a

widget on sale for $5. Ms. Purchaser surely would say, if asked upon leaving the store, that she had been "charged" $5 for the widget — and not that she had been "charged" $10 but actually had paid less because she had received a discount. Acme Hardware Store, for its part, would not say that it had "collected" $10 when it had received only $5. There is no reason to doubt that Congress used the words "collected" and "charged" in precisely this usual way.[7]

2. The Michigan Supreme Court nevertheless departed from this common sense approach. In the view of the court below, "reciprocity agreements are not relevant" in determining which fees are "collected or charged" within the meaning of the ISTEA. JA 49. As that court saw the question, "[w]e must look not at the fees paid by [Yellow] in any given year, but at the *generic fee* Michigan charged or collected from carriers as of November 15, 1991." JA 47 (emphasis added). The court therefore looked at the fee that would have been imposed by Michigan statute *in the absence of a reciprocity agreement* and concluded that, "[w]hile that fee may be waived, and thus not 'charged or collected,' *for a particular carrier* under a reciprocity agreement, such voluntary agreements to waive the fee that happen to benefit a particular carrier do not affect the *generic* per vehicle fee in place on November 15, 1991." JA 48

[7] This understanding also accords with the dictionary definition of the word "charge." The usual understanding of "charged" is: "To impose a duty, responsibility, or obligation on" or "[t]o set or ask (a given amount) as a price." AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 322 (3d ed. 1992). The duty imposed by Michigan in 1991 on Illinois base-plated trucks was to pay nothing, and the amount asked as a price for registering such trucks was zero. Dissenting below, Justice Cavanagh suggested that some dictionary definitions arguably lead to a different conclusion, but in our view all the definitions point to the same answer.

(emphasis in original). The court concluded that this "generic fee" was the "clear focus" of the ISTEA.

This analysis, however, tortures the statutory language beyond recognition. The ISTEA does not refer to "generic fees" or ask what fees were authorized by — *but not actually charged under* — state law. The statute looks, instead, to the fees that were "collected or charged." And while reading "charged" to mean "could have been but weren't charged" might be a suitable approach to statutory construction somewhere through the looking glass, where a local lexicographer told Alice ("in rather a scornful tone") that "[w]hen *I* use a word * * * it means just what I choose it to mean — neither more nor less"[8] — it is not an appropriate method for interpreting a federal statute.

Not surprisingly, the approach taken below leads to absurd results. Assume, for example, that Michigan had entered into reciprocity agreements with each of the other States in the SSRS system. Its "generic fee" would remain $10, the maximum fee it theoretically could have imposed in the absence of its reciprocity agreements. But the State would not have received a single penny in revenue. To say that fees were "collected or charged" in such circumstances makes a mockery of the statutory language.

The Michigan court nevertheless expressed the view that "[t]he new 'fee system' [under the ISTEA] is based not on the fees collected from one individual company, but on the fee system that the state had in place on November 15, 1991." JA

[8] Lewis Carroll, THROUGH THE LOOKING-GLASS (AND WHAT ALICE FOUND THERE), in THE ANNOTATED ALICE 213 (ed. Martin Gardner 2000) (emphasis in original). Alice sensibly responded: "The question is, whether you *can* make words mean so many things." *Ibid.* (emphasis in original).

47. But this analysis misses the statutory point. The court was wrong even on its own terms, since the "fee system" in place in Michigan on November 15, 1991, *included* reciprocal fee waivers; Michigan's reciprocity policy was as much an element of state law as was the state statute setting the fees that would have been imposed in the absence of a reciprocity waiver. Compare Mich. Comp. Laws § 478.7(4), first sentence (providing that "[t]he annual fee * * * shall be $10.00") with Mich. Comp. Laws § 478.7(4), second sentence (providing that "[t]he commission may enter into a reciprocal agreement * * * and may waive the fee required under this subsection"). More fundamentally, the ISTEA specifically looks to whether fees were "collected or charged" on November 15, 1991. And it is undisputed, of course, that fees were not collected from or charged to carriers in Yellow's position.[9] The ISTEA thus does not require that Yellow be treated in any particularly advantageous way. Instead, the statute merely forbids Michigan from raising the fees that it collected or charged from each of the various categories of carriers that it itself had established.

3. The Michigan Supreme Court also predicated its holding that "Michigan's reciprocity agreements are not relevant in determining what fee was 'charged or collected' as of November 15, 1991" (JA 49) on its observation that "[t]he ISTEA itself refers only to the fee collected or charged, and contains no reference to reciprocity agreements." JA 47. This comment, however, adds nothing useful to the analysis.

It is true that the ISTEA does not explicitly refer to reciprocity agreements or other state-law restrictions on

[9] The Michigan Supreme Court itself acknowledged this point, recognizing that a "fee may be waived, *and thus not 'charged or collected'* for a particular carrier under a reciprocity agreement." JA 48 (emphasis added).

registration fees, but it is equally true that the ISTEA does not refer to the "generic fee" considered dispositive by the court below. What the ISTEA *does* refer to is the fee "collected or charged" by the State. Any reciprocity agreements in effect as of November 15, 1991 are essential to determining the fee the State actually collected or charged for operations on that date; the "generic fee" simply does not speak to that question.

Thus, the observation by the Michigan Supreme Court that the ISTEA does not specifically mention reciprocity agreements casts no light on the proper interpretation of the statute. The statute makes plain that the critical inquiry is the fee collected or charged for operations as of November 15, 1991, but it does not address any of the myriad details that might affect the amount actually collected or charged. The ISTEA does not mention the United States Postal Service, but the Michigan Supreme Court could not from that fact properly infer that only fees paid in person to the MPSC may be considered "collected or charged" within the meaning of the statute.

The Michigan Supreme Court accordingly erred in interpreting "the plain language of the statute" (JA 43) in a manner that construes "charged" to encompass situations in which a fee has been waived, and "collected" to encompass fees that could theoretically have been collected in the absence of a reciprocity agreement. Factors other than a State's generic fee must be consulted in determining the "fee * * * collected or charged as of November 15, 1991" under the ISTEA. For this reason, the decision below must be reversed.

B. At A Minimum, The ICC Was Not Unreasonable In Concluding That Reciprocity Agreements Must Be Considered In Determining The Fee A State "Collected Or Charged As Of November 15, 1991"

1. The conclusion that the decision below cannot be reconciled with the plain language of the ISTEA should, of course, be the end of the matter. But if there is any doubt about the clarity of the statutory language, the Court should defer to the analysis of the ICC, which concluded that reciprocity agreements must be taken into account in determining the fees that were "collected or charged" on November 15, 1991. Under settled principles, an agency's reasoned interpretation in such circumstances may be rejected only if it is plainly foreclosed by the statutory language. That surely is not the case here: if the ISTEA's plain terms do not settle the case in Yellow's favor, they are no worse than ambiguous on the point.

It bears emphasis that it is not only Yellow that reads the statute this way. Yellow's view of the ISTEA has been adopted by (1) the ICC — the agency Congress charged with administration of the statute — during two separate administrative proceedings (*SSRS* and *American Trucking*); (2) a unanimous panel of the D.C. Circuit — the federal appellate court most experienced in addressing questions of administrative law; (3) the Michigan Court of Claims; (4) the Michigan Court of Appeals; and (5) two justices of the

Michigan Supreme Court.[10] It seems doubtful that all of these authorities were dead wrong.

The sheer number of judges agreeing with the ICC's interpretation therefore should at least have caused the Michigan Supreme Court to acknowledge the possibility of ambiguity. Moreover, most of the judges addressing the question did not conclude that the ICC's interpretation was marginally within the parameters of the statutory language; several of them wholeheartedly endorsed the ICC's reading as the most natural. The D.C. Circuit found that "the language of the statute precludes" the position found to be unambiguously correct by the Michigan Supreme Court. *NARUC*, 41 F.3d at 729. And writing in dissent below, Justice Kelly concluded that the position taken by the majority of the Michigan Supreme Court required rewriting the statute. See JA 50 ("the majority's interpretation of the ISTEA depends on addition to the statute of words not present there"). A statute is ambiguous when reasonable minds could differ as to its meaning (see *ibid.*); if it is granted that the reading of the ISTEA offered by the court below is at all reasonable, that plainly is the case here.

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[10] Other disinterested parties also have arrived at the same common sense conclusion adopted by the ICC. The Solicitor General, of course, supported the grant of certiorari in this case, observing that "Congress did *not* cap fees at the level that States lawfully *could have* collected or charged in 1991." U.S. Br. 9 (emphasis in original). And the Department of Transportation noted in the comments it submitted to the ICC during the *American Trucking* proceeding that, "if the fee charged on November 15, 1991, was one set under a reciprocity agreement, it seems clear that such fee constitutes the highest fee chargeable. The relevance of the fee charged on November 15, 1991, * * * may not be evaded by the artifice of canceling or modifying the relevant agreement." *American Trucking Associations*, 9 I.C.C.2d at 1192.

In fact, the analysis used by the court below itself indicates that, from Yellow's perspective, the ISTEA is no worse than ambiguous. As we have noted, the Michigan Supreme Court inferred — from the absence of any reference to reciprocity agreements in the text of the ISTEA — that the statute should be construed to deem such agreements categorically irrelevant in calculating fees "collected or charged" under the statute. For reasons explained above, this approach is textually insupportable. But even if the absence of any statutory reference to reciprocity is thought relevant at all, it does not support the Michigan court's conclusion; to the contrary, as this Court recently made clear in an analogous context, "such silence * * * normally *creates* ambiguity. It does not resolve it." *Barnhart* v. *Walton*, 70 U.S.L.W. 4231, docket no. 00-937, slip op. at 5 (Mar. 27, 2002) (emphasis added).

2. If the ISTEA is ambiguous, established principles require that the ICC's interpretation be accorded the highest level of deference. In the ISTEA, Congress specifically directed the ICC to prescribe standards for the SSRS. See 49 U.S.C. § 11506(c)(1). It further specified that the ICC's standards "shall establish a fee system for the filing of proof of insurance [that] * * * will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." 49 U.S.C. § 11506(c)(2)(B)(iv). Thus, Congress could not have been more clear in entrusting the application of the ISTEA in general — and the fee-freezing provision in particular — to the ICC.

When implementing Congress's directive, the ICC arrived at its interpretation of the ISTEA after conducting an extensive notice and comment period. During the process, the ICC received over 50 comments, including those from 10 carriers and carrier organizations, 30 States and state organizations,

seven insurers and insurer groups, two shipper groups, the United States Department of Transportation, and two consulting firms. See *Single State Insurance Registration*, 9 I.C.C.2d at 612 & App. A (Pet. App. 45a, 83a-84a). Only after this formal notice and comment procedure did the ICC issue its final regulation implementing the ISTEA's fee-freezing provision (see 49 C.F.R. § 367.4(c)(4)(ii)) and conclude that both "the letter of the law" and "the intent of the law" compel the conclusion that "participating States must consider fees charged or collected under reciprocity agreements when determining the fees charged or collected as of November 15, 1991." *Single State Insurance Registration*, 9 I.C.C.2d at 618 (Pet. App. 53a, 54a).

In promulgating its standards and its interpretations of the statute necessary to support those standards, the ICC recognized the danger that allowing States to circumvent their reciprocity agreements could impair interstate commerce. Congress had explicitly stated in the ISTEA that any State fees imposed contrary to the ICC's standards would impermissibly burden interstate commerce. See 49 U.S.C. § 11506(c)(2)(C). From comments provided during the rulemaking process, the ICC understood that "States could realize windfall revenue gains from selective or wholesale rescission of reciprocity agreements." *Single State Insurance Registration*, 9 I.C.C.2d at 618 (Pet. App. 53a). The ICC pointed to a "worst case scenario" in which "State revenues could increase from $50 million to $200 million, inconsistent with the spirit of the ISTEA." *Ibid.* In large part to avoid an impermissible burden on interstate commerce, the ICC "concluded that participating States must consider fees charged or collected under reciprocity agreements when determining the fees charged or collected as of November 15, 1991, as required by § 11506(c)(2)(B)(iv)." *Id.* at 618-619 (Pet. App. 54a).

The ICC's construction of the statute it had been entrusted to administer was further endorsed when several States and organizations of States challenged its ruling on the reciprocity agreement issue in an appeal to the D.C. Circuit. The D.C. Circuit panel unanimously adopted the ICC's reading of the ISTEA, finding that "the plain language of the statute precludes [any contrary] interpretation." *NARUC*, 41 F.3d at 729.

Against this background, the ICC's interpretation of the ISTEA is entitled to substantial deference. This Court established the now-familiar rules of judicial deference to administrative pronouncements in *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-845 (1984). Under those rules, judicial deference to an administrative construction of a statute is at its zenith when — as here — Congress has directed an agency to promulgate rules or standards concerning a statute it has been charged to administer:

> If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute.

Id. at 843-844.

This Court recently reaffirmed the *Chevron* framework, explaining that administrative rulings may encounter "a spectrum of judicial responses, from great respect at one end to near indifference at the other." *United States* v. *Mead Corp.*, 533 U.S. 218, 228 (2001) (citations omitted). After reiterating the extensive deference to be accorded an agency when Congress has explicitly entrusted interpretation of a statute to

the agency (see *id.* at 227), the Court pointed to another factor that will trigger extraordinary deference:

> It is fair to assume generally that Congress contemplates administrative action with the effect of law when it provides for a relatively formal administrative procedure tending to foster the fairness and deliberation that should underlie a pronouncement of such force.

Id. at 230. Thus, under this Court's precedents, administrative interpretations of a statute are subject to maximal judicial deference when (1) Congress has explicitly entrusted interpretation of the statute to the agency, and (2) the agency has engaged in formal administrative procedures before arriving at its interpretation.

As we have just described, both of those factors are present in this case. Congress expressly commanded that "the Commission shall prescribe amendments to the standards" in order to create the SSRS. 49 U.S.C. § 11506(c)(1). In giving effect to that congressional command, the ICC engaged in the full panoply of administrative procedures before issuing the amended standards. As a result, the ICC's interpretation of the ISTEA in this case must be afforded the highest level of judicial deference; it is subject to reversal by a reviewing court only if it is "arbitrary, capricious, or manifestly contrary to the statute." *Chevron*, 467 U.S. at 844; accord *Mead Corp.*, 533 U.S. at 227. For reasons we have explained, that is not the case here.

3. Moreover, the reasonableness of the ICC's interpretation is strongly supported by the undisputed legislative purposes of the ISTEA. Under the logic of the decision below, every State participating in the SSRS would be within its rights to rescind its reciprocity agreements and to collect the maximum "generic

fee" of $10 per vehicle. That outcome would impose massive financial burdens on interstate motor carriers, in a manner manifestly inconsistent with Congress's intent. In passing the ISTEA, Congress intended that the new system "benefit the interstate carriers" by reducing the carriers' costs of complying with state fee requirements. See H.R. Conf. Rep. No. 102-404, 102d Cong., 1st Sess. 437 (1991), reprinted in 1991 U.S.C.C.A.N. 1817. In the course of engaging in the extensive administrative process envisioned by Congress, the ICC learned that allowing States to rescind their reciprocity agreements could deal a devastating blow to interstate commerce by *quadrupling* — from $50 million to $200 million — the fees paid by interstate motor carriers. See *Single State Insurance Registration*, 9 I.C.C.2d at 618 (Pet. App. 53a).

The Michigan Supreme Court, of course, never gave any thought to these concerns. By substituting its own idiosyncratic view for the reasoned interpretation adopted by the agency charged by Congress to administer the ISTEA, the court below thwarted congressional intent and intolerably burdened interstate commerce. The Michigan Supreme Court erred in failing to defer to the reasonable interpretation of the statute adopted by the ICC, and the decision below must therefore be reversed.

C. The Fees Michigan Imposed For The 1992 Registration Year Were Not "Collected Or Charged As Of November 15, 1991"

Respondents devoted virtually their entire Brief in Opposition (*e.g.*, 1, 15-26) to defending the Michigan Supreme Court's decision on a ground not addressed by the court below. Indeed, so uncomfortable were respondents with the "generic fee" concept forming the basis for the judgment in their favor that their primary argument in opposition to the petition for

certiorari in this case was that "the Michigan Supreme Court * * * reached the proper result in this case *for reasons other than stated in its opinion*." Brief in Opposition at 1 (emphasis added). But any reasons left unstated in the Michigan Supreme Court's opinion are no more valid than its stated reasons, and respondents' alternative argument accordingly does not provide a basis for affirmance here.

Michigan's argument was based on the timing of its administrative procedures for imposing registration fees for the *1992* registration year. It is undisputed that for the 1991 registration year — which included November 15, 1991 — Michigan charged a fee of zero to vehicles base-plated in Illinois. Beginning in the 1992 registration year, Michigan changed its basis of reciprocity from the base-plating system to the principal-place-of-business system. Thus, carriers whose principal place of business was Kansas but whose vehicles were base-plated in Illinois, and who sought to operate in Michigan beginning February 1, 1992, were required to pay a fee of $10 per vehicle. According to Michigan, however, its 1992 fee qualifies as having been "collected or charged as of November 15, 1991" because the State *sent out the bill for the 1992 registration year* in September of 1991 and because certain carriers (including Yellow) voluntarily submitted their payments for the 1992 registration stamps before November 15, 1991.

This argument, however, cannot be squared with the plain language and clear policy of the ISTEA. In limiting fees to those "collected or charged as of November 15, 1991," the statute is most naturally read as looking to the fees that were charged to entitle vehicles to traverse the taxing State's roads on that date. And it is, again, undisputed that Illinois base-

plated trucks traveling on Michigan's roads as of November 15, 1991, paid the State nothing at all.

In addition, Michigan's alternative argument runs afoul of the deference due a reasonable interpretation of the statute by the agency charged with administering it. As we have previously noted, the ICC made clear in the *American Trucking* proceeding that Michigan's argument was contrary to the terms of the ISTEA:

> Yellow has raised the issue of whether the statutory language concerning the "fee charged or collected as of November 15, 1991[,]" relates to fees charged for the 1991 registration year or for the 1992 registration year. *We think it clear that the statutory language concerns only fees charged or collected for the 1991 registration year, and we so find.*

American Trucking Associations, 9 I.C.C.2d at 1195 (emphasis added). Under the settled principles of administrative law we have previously discussed (*supra*, at 22-25), this interpretation must be accorded the highest level of judicial deference. Again, Congress expressly entrusted the ISTEA and its fee-freezing provision to the ICC, and the ICC issued its interpretation in *American Trucking* only after invoking the APA's notice and comment procedures.

The ICC's interpretation of the statute must be accepted as authoritative. Interpreting the phrase "collected or charged as of November 15, 1991" to refer to the fees collected or charged to conduct operations as of November 15, 1991 is the most natural reading of the statutory language. And it avoids the danger that States could evade or manipulate the ISTEA by rushing to announce prospective fee changes prior to the statute's effective date, or the possibility that the permissibility of the fee for a particular carrier could turn on whether the fee-

payer's check was delayed in the mail. At an absolute minimum, it is a reasonable interpretation of the ISTEA that is entitled to deference from a reviewing court.

Undoubtedly for that reason, none of the Michigan courts was willing to adopt Michigan's argument as a basis for ruling in its favor. The fees Michigan charged for cab card stamps effective February 1, 1992 were not "collected or charged as of November 15, 1991." Michigan's argument accordingly does not provide an alternate basis for affirming the decision below.

CONCLUSION

For the foregoing reasons, the decision of the Michigan Supreme Court should be reversed.

Respectfully submitted.

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